

**RESPONSE TO RESTRICTION REQUIREMENT AND PRELIMINARY AMENDMENT**

Serial Number: 10/612,760

Filing Date: June 30, 2003

Title: RATE MATCHING APPARATUS, SYSTEMS, AND METHODS

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**REMARKS**

Claim 26 is amended to correct a typographical error, and not for reasons related to patentability. Claims 29-40 have been added. No claims are canceled. Thus, claims 1-40 are now pending in this Application.

**Election/Restriction Response**

In response to the Restriction Requirement mailed August 11, 2006, the Applicant hereby elects, with traverse, claims 12-16 (styled as "Species 3" in the Office Action), as well as new claims 29-40 which depend from them. The Applicant therefore reserves the right, if necessary, to introduce the non-elected claims 1-11 and 17-28 into this Application, or into one or more divisional applications at a later date.

The Applicant respectfully submits that the substance of the Restriction Requirement is not established in accordance with the mandate of M.P.E.P. § 806.04(b), which states, in part:

Where inventions as disclosed and claimed are both (A) species under a claimed genus and (B) related, then the question of restriction must be determined by both the practice applicable to election of species and the practice applicable to other types of restrictions such as those covered in MPEP § 806.05 - § 806.05(i). If restriction is improper under either practice, it should not be required.

The analysis requires two criteria for a proper restriction: (A) the inventions must be independent or distinct, and (B) there must be a serious burden on the examiner.

An analysis to support these criteria was not provided in the Restriction Requirement. For example, while it is asserted by the Office that species 3 (claims 12-16) is independent or distinct from species 5 (claims 23-25), it is respectfully noted that every element of claim 12 is included in claim 25; the elements of these claims are not mutually exclusive. Thus, the Applicant respectfully notes that at least claim 12 is generic to species 3 and a portion of species 5. Therefore, allowance of claim 12 should result in allowance of at least claim 25. Similar issues exist with respect to claims 17 and 28 in species 4 and 6, respectively.

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Further, there is no evidence in the record to support an assertion that the number of subclauses to be searched with respect to the various embodiments is overly burdensome. The same search required with respect to species 6 would also be conducted for species 4 (similarly, for species 5 and 3). Accordingly, the Applicant respectfully requests that at least the requirement to elect between species 4 and 6 (as well as species 3 and 5) be withdrawn.

By this response, the Applicant has added new claims 29-40. No new matter has been added. Please enter the new claims of this amendment prior to examining this Application. The Examiner is invited to telephone the Applicant's attorney, Mark Muller, at (210) 308-5677 to facilitate the prosecution of this Application. If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

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By their Representatives,

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